

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE INC., *et al.*,

Defendants.  
----- X

12 Civ. 2826 (DLC)

----- X  
THE STATE OF TEXAS,  
THE STATE OF CONNECTICUT, *et al.*,

Plaintiffs,

v.

PENGUIN GROUP (USA) INC., *et al.*,

Defendants.  
----- X

12 Civ. 3394 (DLC)

**APPLE INC.'S POST-TRIAL MEMORANDUM**

## Similar Contract Terms = Apple's Independent Business Interest



**Russell Grandinetti:** Amazon sought certain core terms with all five defendant publishers. Tr. 640:2-14 (citing DX-274).



**Thomas Turvey:** Was in Google's independent business interests to insist on core terms with all six publishers. Tr. 871:6-11; Google's intent in offering same terms to all major publishers was not to help them organize as a group. Tr. 873:17-22.



**Eddy Cue:** Sought to treat everyone "roughly the same" and gave everyone similar terms; confirmed Apple has done so for its other content businesses. Tr. 1775:23-1776:14.



**Richard Gilbert:** Does not dispute that Apple had a business justification for imposing similar contractual terms on all five publishers. Tr. 1549:15-19.

## Agency Model = Apple's Independent Business Interest

---



**Russell Grandinetti:** Amazon uses the agency model for other parts of its business, including periodicals and music. Tr. 728:11-18.



**Eddy Cue:** Agency model worked effectively because content owners must compete with each other; and keeps pricing aggressive. Tr. 1791:24-1792:14.

## MFN = Apple's Independent Business Interest



**Brian Murray:** Amazon's reasons for wanting a retail-price MFN were the same as Apple's reasons. Tr. 1061:14-1062:22



**David Young:** Testified to his understanding that Apple insisted on the MFN because "they didn't want to be undersold." Tr. 1458:13-15



**Eddy Cue:** Testified that the purpose and intent of the MFN was to ensure that Apple could be competitive on price. Tr. 1836:19-23.

## 30% Is A Standard And Reasonable Commission



**Russell Grandinetti:** 30% commission gave “certain degree of comfort” of being no worse off. Tr. 669:22-670:1.



**John Sargent:** Macmillan had 70/30 agency model split discussions ongoing before meeting with Cue. Tr. 1189:18-1190:5.



**Eddy Cue:** 30% commission used in App Store and permitted low, single-digit profit margin. Cue Decl. ¶54.



**DX-278:** Jan. 31 2010 email chain between Porco and McIntosh regarding Amazon’s seeking 70/30 split.





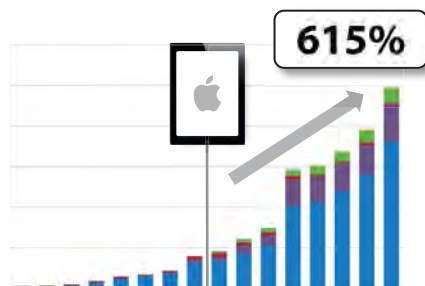
## **Declaration Of Kevin Murphy ¶18**

“[A]s a matter of economics, all the actions taken by Apple in connection with its entry into e-book retailing are consistent with it acting independently of any conspiracy with publishers.”

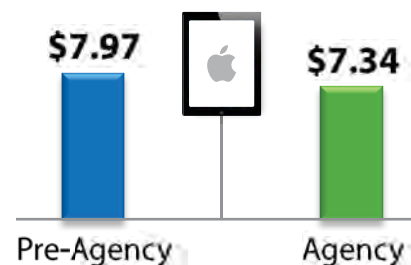
# Price, Output, Competition

# Pro-Competitive Benefits Of Apple's Entry In eBook Market

## Output Increase



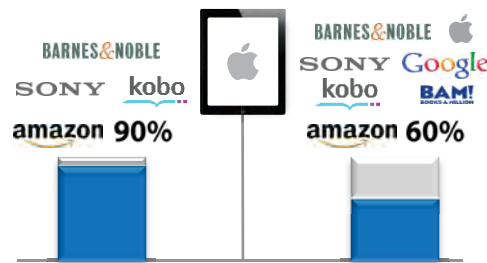
## Price Decrease



## Product Innovation



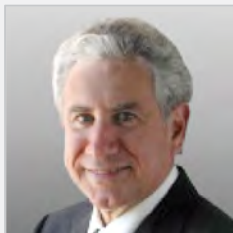
## Market Competition



## Consumer Choice



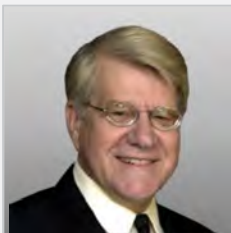




## Testimony Of Richard Gilbert

THE COURT: Is another way of thinking about it that if there hasn't been any control or analysis presented by Dr. Burtis, of whether the average price would have fallen even more without the alleged conspiratorial activity?

THE WITNESS: Yes, your Honor, that's another way of looking at it. If all those other factors were controlled for, and it's my understanding that that's what Professor Ashenfelter was trying to do, then, yes, that the prices would have fallen even more than they did.



## Testimony Of Orley Ashenfelter

Q. ...My question was intended to go to, as you pointed out how I wasn't precise enough, average price at the market level. You haven't done that the correct way, as you term it in paragraph 61 of your declaration, have you?

A. ...I have not done an analysis of Dr. Burtis' all data attempting to establish for what a but-for world -- how to model a but-for world.

## DX-338: July 19, 2010 Amazon Press Release

Press Releases

[Print Page](#) [Close Window](#)

USA v. Apple Inc., et al.  
12-CV-02826-DLC

DX-388

<< [Back](#)

### Kindle Device Unit Sales Accelerate Each Month in Second Quarter; New \$189 Price Results in Tipping Point for Growth

*Amazon.com Now Selling More Kindle Books Than Hardcover Books*

Kindle offers the largest selection of the most popular books people want to read. The U.S. Kindle Store now has more than 630,000 books, including New Releases and 106 of 110 *New York Times* Best Sellers. Over 510,000 of these books are \$9.99 or less, including 75 *New York Times* Best Sellers. Over 1.8 million free, out-of-copyright, pre-1923 books are also available to read on Kindle.

- On July 6, Macmillan announced that James Patterson had sold 1.14 million e-books to date. Of those, 607,501 were Kindle books.
- Five authors—Charlaine Harris, Stieg Larsson, Stephenie Meyer, James Patterson, and Nora Roberts—have each sold more than 500,000 Kindle books.

Readers are responding to Kindle's uncompromising approach to the reading experience. Weighing 10.2 ounces, Kindle can be held comfortably in one hand for hours, has an e-ink display that is easy on the eyes even in bright daylight, has two weeks of battery life, lets you buy your books once and read them everywhere—on your Kindle, Kindle DX, iPad, iPod touch, iPhone, Mac, PC, BlackBerry, and Android-based devices—and has free 3G wireless with no monthly fees or annual contracts—all at a \$189 price.

Learn more about Kindle at <http://www.amazon.com/kindle>.

#### About Amazon.com

Amazon.com, Inc. (NASDAQ: AMZN), a Fortune 500 company based in Seattle, opened on the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon.com, Inc. seeks to be Earth's most customer-centric company.

[http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle\\_pf&ID=1449176](http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle_pf&ID=1449176)

4/18/2013

# Conclusion

# Apple's eBook Market Choices According To The Government

## Amazon Terms:

Lose Money &  
Get Windowed



or

Agency Agreement  
= Antitrust Liability



or

Do Not Enter  
eBook Market







